IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

CRL.A.No. 1495 of 2005()

CC.4/2001 of ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE

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APPELLANT: ACCUSED

O.T.KARUNAKARAN NAMBIAR, S/O.LATE
P.NARAYANAN NAMBIAR, "LAKSHMI KRIPA",
KEEZHARA, KANNAPURAM, CHERUKUNNU, SUB ENGINEER,
K.S.E.BOARD, ELECTRICAL SECTION OFFICE,
MAVUNGAL).

BY ADVS. SRI.T.S.JOHN
SRI.M.S.RADHAKRISHNAN NAIR

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NO.14168 OF 2005 IN CRL. APPEAL NO.1495 OF 2005.

DISMISSED

9.7.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO.1495 OF 2005

Dated this the 9th day of July, 2007

JUDGMENT

The accused in C.C. No.4 of 2001 on the file of the Enquiry Commissioner and Special Judge, Kozhikode is the appellant. He faced trial for the offences punishable under Sections 7 land 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act").

2. The prosecution case against the accused - appellant was that while he was working as Sub Engineer in the Kerala State Electricity Board in the Electrical Section, Mavungal, he demanded and accepted an illegal gratification of Rs.100/- from PW.1 who had approached him with an application for getting electric connection to his house. It is the further allegation of the prosecution that after taking estimation from the house of PW.1, the accused again demanded Rs.200/- and that on the same day he accepted an amount of 100/- from PW.1 and further on 3.3.2000, the accused demanded and accepted an amount of Rs.500/-

from PW.1 . To prove the case against the accused, the prosecution examined PWs.1 to 4 and produced Exts.P1 to P15 as well as MOs.1 to 6. After closing the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. Denying the allegations levelled against him, the accused stated that he had gone to the house which was in the name of the father of PW.1 to inspect the wiring and that during the course of inspection, it was found that the total distance from the line upto the main switch would come to 110 metres. He also stated that he noticed that the distance from the post could be reduced by 10 metres in the event of shifting the main switch to another portion of the house and hence he instructed PW.1 to change the main switch. The accused further stated that he informed PW.1 that the main switch would be shifted to the proposed place within two days and asked PW.1 to produce the new sketch after shifting the main switch. He further stated that PW.1 came to his office on 3.3.2000 and that when he demanded the sketch, PW.1 thrust a currency note of 500 rupees denomination into his pocket and ran out of the room and that he followed PW.1 and when he reached the entrance gate, the Deputy Superintendent of Police and party took him to a room and questioned him and thereafter he was suspended from service. However, considering the entire evidence, the trial court found the appellant guilty of the offences alleged against him, convicted him

thereunder and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for one year under Section 13(1)(d) read with Section 13(2) of the P.C. Act. He was further sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one year under Section 7 of the P.C. Act. The substantive sentences were ordered to run concurrently. Set off under Section 428 Cr.P.C. was also granted to the accused. The above conviction and sentences are challenged in this appeal.

3. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant submits that the trial court went wrong in accepting the evidence of PW.1, the defacto complainant in the case, regarding the demand and acceptance of MO.1 currency note as no other piece of evidence was adduced by the prosecution to corroborate the version given by PW.1. Counsel further submits that the version given by PW.2 cannot be taken as corroborative to the evidence of PW.1 to prove that the appellant received bribe from

PW.1. Lastly counsel submits that the prosecution miserably failed to prove that the appellant committed the offences alleged against him by adducing clear and cogent evidence as Ext.P2 entrustment mahazar and Ext.P3 recovery mahazar do not prove that the appellant had demanded or accepted bribe.

5. Before considering the contentions raised by the learned counsel appearing for the appellant, it is advantageous to consider the evidence relied on by the prosecution. The prosecution mainly relied on the evidence of PW.1, the defacto complainant. PW.1 stated before the court below that he submitted Ext.P4(a) application of his father before the accused on 22.1.2000 for getting electric connection in the house belonging to his father and that on the date of submitting the application, the accused had demanded an amount of Rs.200/-. He further stated that he gave the accused Rs.100/- on that day and a further sum of Rs.100/- on 28.1.2000 when the accused came to the site for taking the estimate. This witness further stated that the accused instructed him to shift the main switch to another portion of the house so as to reduce the distance from the post and after shifting the main switch, to come to his office with his part of the share, which he understood from the local people to be Rs.500/-. This witness further stated that he then went to the office of

PW.3, the Deputy Superintendent of Police with a currency note of five hundred rupees denomination and gave Ext.P1 statement. PW.1 further stated that he gave the currency note to PW.3 who after noting down the number of the currency note and putting initial on it, applied phenolphthalein powder on the currency note and returned the same to him and then asked to him to go to the office of the accused and give him the money. It was further stated by this witness that he went to the office of the accused and informed him that he had brought the money whereupon the accused accepted the currency note and put it inside the pocket of his shirt. PW.1 also stated that as soon as the accused accepted the money, he came out of the room, gave a signal to PW.3 as instructed and that on getting the signal, PW.3 along with the police party and other independent witnesses came to the room of the accused and took the currency note in question from the pocket of the accused. This witness further stated that phenolphthalein test was conducted on the currency note and it gave positive results.

6. PW.2 was a trap witness who supported the version given by PW.1 with regard to acceptance of money by the accused. He also stated that he signed Ext.P2 entrustment mahazar and Ext.P3 recovery mahazar. PW.3 was the Deputy Superintendent of Police, Vigilance and Anti-

corruption Bureau, Kasaragod during the relevant time. He stated that he registered Ext.P1(a) First Information Report on the basis of Ext.P1 statement and that he applied phenolphthalein powder on MO.1 currency note given by PW.1 and asked PW.1 to go to the office of the accused and to hand over the money to him. This witness further stated that he went along with the trap team to the office of the accused and that on getting the signal from PW.1 he went to the room of the accused, took MO.1 currency note from the pocket of the accused. PW.3 further stated that he conducted phenolphthalein test on MO.1 currency note seized from the accused and that the result was positive. PW.4 was the Inspector of Vigilance and Anti-corruption Bureau, Kasaragod during the relevant time. He stated that he took over investigation of the case and questioned the witnesses and recorded their statements.

7. The question to be considered is whether there is any evidence to show that the appellant had demanded Rs.500/- as bribe from PW.1 for giving electric connection in the house of the father of PW.1. In this context, the evidence of PW.1 has to be considered. This witness stated in chief examination as follows:

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PW.1 further stated that after handing over the currency note to the appellant, he gave the signal to PW.3 and the other officials who had accompanied him and immediately thereafter PW.3 and the other officials came to the office of the accused and recovered MO.1 currency note from his pocket. In cross-examination, this witness had stated that the accused had asked him over the telephone to bring his share. He further stated as follows:

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From the evidence of this witness, it is not possible to hold that the appellant had demanded from him an amount of Rs.500/- as bribe, as alleged by the prosecution. Even Ext.P1 first information statement does not reveal that the appellant had demanded any bribe from PW.1. The only statement in Ext.P1 is that the appellant wanted his share and that share, according to PW.1, was Rs.500/-. Even though PW.1 stated that he was told by the people of the locality that the appellant usually demands Rs.500/- as bribe, he was not able to give the name of any person who stated so. In the above circumstances, the evidence of PW.1 that the

appellant demanded or accepted an amount of Rs.500/- as bribe cannot be accepted . In this context, the evidence of PW.2 is also relevant. This witness was examined to prove that he had witnessed the demand and acceptance of bribe by the appellant on 3.3.2000. In chief examination, PW.2 stated as follows:

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In cross-examination, this witness stated as follows:

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The above statements would show that PW.2 had not witnessed what had actually happened in the office of the appellant. He had no idea regarding the demand or payment of any amount to the appellant by PW.1. The only evidence regarding demand and acceptance of bribe by the appellant is that of PW.1. In this context, the learned counsel appearing for the appellant invited the attention of this Court to the decision of the Apex Court reported in **T. Subramanian v. State of T.N. (2006) 1 S.C.C. 401**. In the above judgment, the Apex Court held that in the absence of proof of demand and acceptance of money as illegal gratification, it cannot be said that the accused committed offences punishable under Sections 5(1)(d) or

13(1)(d) read with Section 13(2) of the P.C. Act. Learned counsel also placed reliance on the decision reported in **R.Balakrishna Pillai v. State of Kerala (2003) 9 S.C.C. 700** wherein the Apex Court held that for an offence under Section 5(1)(d) read with Section 5(2) of the P.C. Act, the prosecution has to prove that the accused obtained the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant.

8. The trial court considered the evidence of PW.3 who had stated that he recovered MO.1 currency note as per Ext.P3 recovery mahazar. The evidence regarding recovery alone is not sufficient to find that the appellant demanded or received Rs.500/- from PW.1. In this context, the case set up by the appellant assumes relevance. The specific case of the appellant even at the time of preparation of Ext.P3 recovery mahazar was that he had not demanded or accepted any amount as claimed by the prosecution. At the same time, the appellant stated that PW.1 thrust MO.1 currency note into his pocket and then went out of the room. PW.2 when cross-examined in this regard stated as follows:

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The evidence of PW.3 would only show that MO.1 was recovered from the pocket of the appellant. But, that by itself is not sufficient to prove the prosecution case. In this context, learned counsel appearing for the appellant placed reliance on the decision of the Apex Court reported in **M.K. Harshan v. State of Kerala, A.I.R. 1995 S.C. 2178**. In the above judgment, the Apex Court held as follows:

> "Where in a trap case, the tainted money was recovered from the drawer of the accused and the trap witness stated that accused has said to put them in drawer, in absence of evidence corroborating his deposition same cannot be relied up, more particularly when the plea of the accused that the same was planted in his absence and without his knowledge was found to be probable."

Learned counsel also placed reliance on another judgment of the Apex Court reported in **Suraj Mal v. State (Delhi Administration), 1980 S.C.C. (Cri) 159**. In the above judgment, the Apex Court considered the same fact situations as that of the case in hand and held that mere recovery by itself cannot prove the charge of the prosecution in the absence of any evidence to prove payment of bribe or that the appellant voluntarily accepted the money. Reliance was also placed on yet another judgment of the Apex Court reported in **Damodaran Nair v. Government of India, 1997(1)K.L.T. 544(SC)** wherein the Apex Court considered the term "accept" contemplated in Section 161 I.P.C. and Section 4(1) of the P.C. Act and held as follows:

> "If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to `acceptance' within the meaning of S. 161 IPC. It cannot be said, therefore, as an abstract proposition of law, that without a prior demand there cannot be `acceptance'."

9. In the light of the principles laid down by the Apex Court and the evidence adduced before the court below, this Court is of the view that the

finding of the trial court that the evidence of PW.1 can be accepted to prove that the appellant had demanded or accepted bribe, as alleged by the prosecution, is not justifiable. This Court has already found that even if the evidence of PW.1 can be accepted, there is no piece of independent evidence to corroborate the evidence of PW.1. In the above circumstances, the impugned judgment is set aside. The appellant is acquitted of all the charges levelled against him.

The Crl. Appeal is allowed. The bail bonds executed by the appellant shall stand cancelled.

(K.THANKAPPAN, JUDGE)

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